

Written Public Comments Submitted for CRC Regular Meeting (5/12/2021)

Agenda Item	Name	Position	Comments	Comments Received	Attachment
6.A.i.	Henry Fung	Oppose	<p>Dear Commissioners,</p> <p>I strongly question the selection of National Demographics Corporation as one of the finalists for demography services, and enter the comments by attorney Scott Rafferty to the March 23, 2021 Kings County (California) Board of Supervisors meeting into the record. I enthusiastically encourage commissioners to ask Doug Johnson, principal at NDC, to answer regarding his work in West Contra Costa County Unified School District, the City of Martinez, the Republican Party of North Carolina, and Kern County. I encourage the commissioners to ask why his firm was specifically written out of participating in demography and mapping services for the City of Alhambra (in Los Angeles County).</p> <p>It is unfortunate that the strong conflict of interest standards that the Los Angeles County Redistricting Commission have set have disqualified some of California's leading mappers and demographers. For example, Redistricting Partners, owned by Paul Mitchell who is doing redistricting for Long Beach, among other jurisdictions, is disqualified because Mitchell's spouse is the president and CEO of Planned Parenthood California, and has lobbied at the state level under Planned Parenthood and the California Medical Association. The firm Redistricting Insights, whose principals include Matt Rexroad, is a former Yolo County supervisor and has lobbied under the firm Meridian Pacific and worked for the California Republican Party. Wagaman Strategies is owned by Michael Wagaman, a long time Democratic Party operative.</p> <p>However, just because National Demographics Corporation may technically qualify does not mean that</p>	5/11/21	See A-1

			<p>their right-leaning bias should be discounted. The selection of NDC would raise questions about credibility from many under-represented communities who are having to deal with NDC's work in their cities and school districts in Los Angeles County.</p> <p>Also, it should be noted that NDC's vice president, political scientist Justin Mark Levitt, is not the same person as Justin Michael Levitt, the Loyola Law School redistricting expert and former Obama and current Biden administration official. There is sometimes confusion in redistricting circles given that these two individuals have the same first and last name, but completely different backgrounds.</p> <p>In that sense, an outside perspective such as that provided by ArcBRIDGE may be valuable. While ArcBRIDGE is a firm with little existing presence in California, this may enable them to be untainted by the perception of bias that NDC would bring to the table. They appear to have significant experience in redistricting and moreover no negative perceptions in the community, unlike NDC. A company like ArcBRIDGE could bring best practices from other parts of the country into Los Angeles County's redistricting. There are concerns about the technical capability and outsourcing work to Virginia, but given the virtual nature of meetings this may be less important today. I strongly encourage the commission see if ArcBRIDGE can provide appropriate demographic services as an alternative to NDC. Alternatively, the commission could ask what other vendors provided proposals, and review all of the proposals together.</p> <p>Sincerely, Henry Fung</p>		
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4	Jenniffer Jones	Other	Where is the link to draw a map for me to submit a map of how I think the 25 th Congressional District should look like. Thank you.	5/12/21	None
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ATTACHMENT(S) BEGIN NEXT PAGE

A-1 begins the following page

SCOTT J. RAFFERTY
ATTORNEY AT LAW
1913 WHITECLIFF COURT (202)-380-5525
WALNUT CREEK CA 94596 RAFFERTY@GMAIL.COM

March 9, 2021

Kings County Board of Supervisors
1400 W. Lacey Boulevard
Hanford, California 93230

Re: Agenda Item 5A (March 9, 2021)

Dear Board:

I urge the Board not to award NDC a contract to provide demographic services or to administer the redistricting process. There are better choices.

NDC has been hostile to minority voting rights. In West Contra Costa USD, NDC cost the District over \$650,000 by spending over a year producing map after map without a Latino majority trustee area. When WCCUSD proposed one of NDC's maps to the Contra Costa committee on school district organization, it was rejected. This had not previously happened to any one of hundreds of district proposals made anywhere in California. NDC's "impeccable reference" from WCCUSD declined to produce public records during the litigation and is no longer employed by the District. Ultimately, NDC's own client stipulated: "if this case were to go to trial, the Plaintiffs would likely prevail on their [California Voting Rights Act] and Section 2 [of the federal Voting Rights Act of 1965] claims as pled in the Complaint." The stipulated judgment adopted plaintiffs' map and imposed an independent redistricting commission, apparently the nation's first for a school district. Exhibit 1.

NDC tells incumbents that "Districting Rules" include "continuity in office" and "avoid pairing" (Exhibit 2), but its extreme measures often backfire. In San Ramon Valley USD, NDC "cracked" the Asian community in Dougherty Valley, using what district staff called a "tentacle" to connect juts enough Asians to maintain a 51% majority with a very different census tract six miles away in Danville. The Board called this gerrymander the "puzzle piece." Exhibit 3. It allowed a strong white incumbent to run in 2020, but he failed to do so.

New Jerusalem USD, a small rural school district with a statewide charter network, decided to preemptively district its population of just 1840 people. NDC's Shalice Tilton divided the white San Joaquin River Club three ways to help the cluster of white incumbents surrounded by Latinos on the other edge of the district – and still

had to cross I-5 to move a single home into Trustee Area 1. Exhibit 4. The incumbent who lived there was also apparently too embarrassed to run for reelection. Former NJESD deputy superintendent Jeff Tilton now works for NDC.

Almost all the experience that NDC cites predates the Fair Maps Act, which was enacted in response to excesses such as NDC's gerrymander of Martinez. Exhibit 5. NDC has proven incapable of working with the new law. It prepared a compact map (103c) with a Latino majority open seat for the Richmond City Council. But once it advised the Council that Section 2 compliance is a matter of risk tolerance, the Council made a last minute change to Map 115b, eliminating both the Latino majority and its open seat and creating a noncontiguous district with a Reock score of almost 1.0 (indicating maximum non-compactness). Exhibit 6. These are precisely the abuses that the Fair Maps Act made unlawful.

Legally required public outreach and disclosure has also proved too much for NDC. As you may know, the Fair Maps Act also requires extensive hearings, public outreach, and proactive disclosure on a website maintained for 10 years. Santa Barbara's County Code supplements these provisions. When the League of Women Voters attached its well documented account of Dr. Johnson's experience to an email dated January 6, 2021 (Exhibit 7), he used his role as administrator to interdict the document, accused the LWV of a "slandorous hatchet job," and misleadingly posted the email with an entirely different document attached.

Last spring, City of Napa became the second jurisdiction to create districts under the Fair Maps Act. Unlike Richmond, the exercise was a model in public engagement and consensus building, thanks largely to the combination of the engaging manner of Paul Mitchell (Redistricting Partners) and the extraordinary efforts of City Clerk Tiffany Carranza. The contrast could not be more startling.

NDC is a litigation magnet, which explained why it omits Richmond, San Ramon Valley USD, and West Contra Costa USD from its list of former clients. WCCUSD is only the fifth jurisdiction in California found to have unlawfully diluted minority voters due to its districts or at-large system, and two of the prior cases were prosecuted by the federal Civil Rights Division.¹ Latinos in Richmond and Asians in San Ramon Valley USD were simply unable to pursue Section 2 litigation, which is costly and prolonged.

Kings County should also consider Dr. Johnson's courtroom experiences since he last served the county ten years ago. Last year, a three-judge panel in Common Cause

¹ US v. Santa Paula (2000); US v. Upper San Gabriel MWD (2000), Watsonville (1988); Kern County (2016)

v. Lewis (§647) summarized Dr. Johnson's performance, reporting that every court before which he appeared in person "rejected his methodologies, analogies and conclusions," adding: "This Court joins those other courts."²

NDC ignores the strongest injunctions from the California Courts. NDC's inflated "Latino Est." measures of voting strength plagued the WCCUSD litigation. In Garrett v. City of Highland, – one of the cases cited by Common Cause v. Lewis - Judge Cohn explained Dr. Johnson's use of an arbitrary 11% inflation of his measure of Latino voting strength. Exhibit 8. Undeterred, Dr. Johnson had a deputy use the same methodology last December in Robles v. City of Ontario. The solution, which may not end well for NDC, was to have the lawyers recuse Judge Cohn for alleged bias.

Kings County should not consider complying with the Voting Rights Act of 1965 and the new Fair Maps Act as an exercise in risk management, but as an absolute public duty. To retain NDC is to disrespect the rights of minority voters and to accept that public input from institutions such as the League of Women Voters may be intimidated or censored.

Sincerely,

A handwritten signature in dark ink that reads "Scott Rafferty". The signature is written in a cursive, flowing style.

Scott J. Rafferty

² <https://www.commoncause.org/north-carolina/wp-content/uploads/sites/22/2019/09/Common-Cause-v.-Lewis-trial-court-decision-9.3.19.pdf>

EXHIBIT 1

1 **SPINELLI, DONALD & NOTT**
2 A Professional Corporation
3 Domenic D. Spinelli, SBN: 131192
4 601 University Avenue, Suite 225
5 Sacramento, CA 95825
6 Telephone: (916) 448-7888
7 Facsimile: (916) 448-6888
8 Email: domenics@sdnlaw.com

9 Attorneys for Defendants
10 West Contra County Unified School District

11 Scott Rafferty, Esq.
12 1913 Whitecliff Court
13 Walnut Creek, A 94596
14 Telephone: (202) 380-5525
15 Email: rafferty@gmail.com

16 Attorney for Plaintiffs
17 Linda Ruiz-Lozito and Bay Area Voting
18 Rights Initiative

19 IN THE SUPERIOR COURT OF CALIFORNIA
20 IN AND FOR THE COUNTY OF CONTRA COSTA

21 LINDA RUIZ-LOZITO
22 AYANA YOUNG
23 BAY AREA VOTING RIGHTS INITIATIVE

Case No.: C18-00570

Case assigned to Dept. 12 for all purposes

24 vs. Plaintiffs,

STIPULATION AND [PROPOSED]
JUDGMENT

25 WEST CONTRA COSTA UNIFIED
26 SCHOOL DISTRICT

27 Defendants,

[FEES EXEMPT PURSUANT TO
GOVERNMENT CODE SECTION 6103]

28 The parties to the above-entitled action, Plaintiffs LINDA RUIZ-LOZITO and BAY AREA
29 VOTING RIGHTS INITIATIVE, and Defendant, WEST CONTRA COSTA UNIFIED SCHOOL
30 DISTRICT, by and through their respective attorneys of record, set forth their stipulations to resolve
31 this matter and hereby request judgment be entered under the following terms and conditions:

3 Rights Act of 2001, Elections Code §14025 et seq: ("CVRA"), and Section 2 of the Voting Rights
4 Act of 1965, as amended, 52 U.S.C. §10301 ("Section 2"), to the current method of the West Contra
5 Costa Unified School District ("WCCUSD" or "Defendant") for electing its trustees. Under the
6 current system, trustees are elected "at- large" by all of the voters in WCCUSD. Plaintiffs claim that
7 racially polarized voting in at-large trustee elections dilutes the voting strength of Latino and African-
8 American citizens and thereby impairs their ability to participate in the political process, to elect
9 candidates of their choice, and to influence the outcome of elections. Plaintiffs claim that the at-large
10 system results in a denial or abridgement of their right to vote, and that WCCUSD must elect each of
11 its trustees from distinct trustee areas, which are mutually exclusive and collectively exhaust its
12 territory.

13 B. On March 21, 2018, the Board of Trustees ("Board") for West Contra Costa Unified School
14 District passed a resolution (Resolution No.: 64-1718), stating the Board's intent to move to trustee
15 area elections. (See Exhibit A attached hereto.)

16 C. Defendant filed its Answer, generally denying the allegations and asserting affirmative defenses
17 on July 6, 2018.

18 D. On August 13, 2018, the parties stipulated that the three trustee seats that were to be elected at
19 the state-wide general election on November 6, 2018 would be for two-year terms, so that elections
20 by trustee area could be implemented through the entire district at the state general election of
21 November 3, 2020. (See Exhibit B attached hereto.)

22 E. On September 12, 2018, the Court entered an Order upon the parties' Stipulation in accordance
23 with these terms. (See Exhibit B attached hereto.)

24 F. As a result of the continued negotiations, and in exchanging various proposals, the parties have
25 agreed on a trustee area map to be used for the November 2020 election, attached hereto as Exhibit

26 C.

27 //

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1 succeeding his or her election. On September 12, 2018, upon application of the parties
2 to this action, this Court ordered that trustees elected on November 6, 2018 would serve
3 shortened terms, so that trustees would be elected from each of the five trustee areas on
4 November 3, 2020.

- 5 4. Board elections are conducted by an "at-large method of election" within the meaning of
6 Elections Code § 14026(a)(l). All voters, regardless of where they reside within
7 WCCUSD, vote for their preferred trustee candidates, and candidates who receive the
8 most votes are elected to Board.
- 9 5. Plaintiff Linda Ruiz-Lozito is registered to vote and resides within the boundaries of
10 WCCUSD. Plaintiff is a member of a "protected class" as the term is defined in
11 California Election Code § 14026.
- 12 6. WCCUSD acknowledges that the plaintiffs demonstrated that a protected class is
13 sufficiently large and geographically compact to constitute a majority of citizens of
14 voting age within one trustee area.
- 15 7. The community referred to in paragraph 7 is cohesive and capable of electing its
16 candidate of choice within this trustee area.
- 17 8. During the negotiation process, the parties have jointly developed the remedial map
18 attached hereto as Exhibit C, which is compliant with state and federal voting rights
19 laws, and will be used on November 3, 2020, when residents of WCCUSD will elect
20 trustees from each area using the attached remedial map. The Trustee Areas [4] and [5]
21 on this map will elect trustees to two-year terms in November of 2020. Trustee Areas
22 [1], [2], and [3] will continue to serve four-year terms.
- 23 9. WCCUSD acknowledges that if this case were to go to trial, the Plaintiffs would likely
24 prevail on their CVRA and Section 2 claims as pled in the Complaint.
- 25 10. As a result of this litigation, the Board's Resolution (Exhibit A), the Stipulation and
26 Order between the parties (Exhibit B), and the agreed and legally compliant remedial
27 map (Exhibit C), the parties agree that these elements combined provide a conversion of
WCCUSD's existing at-large method of electing trustees into a system in which each of

Districting Rules

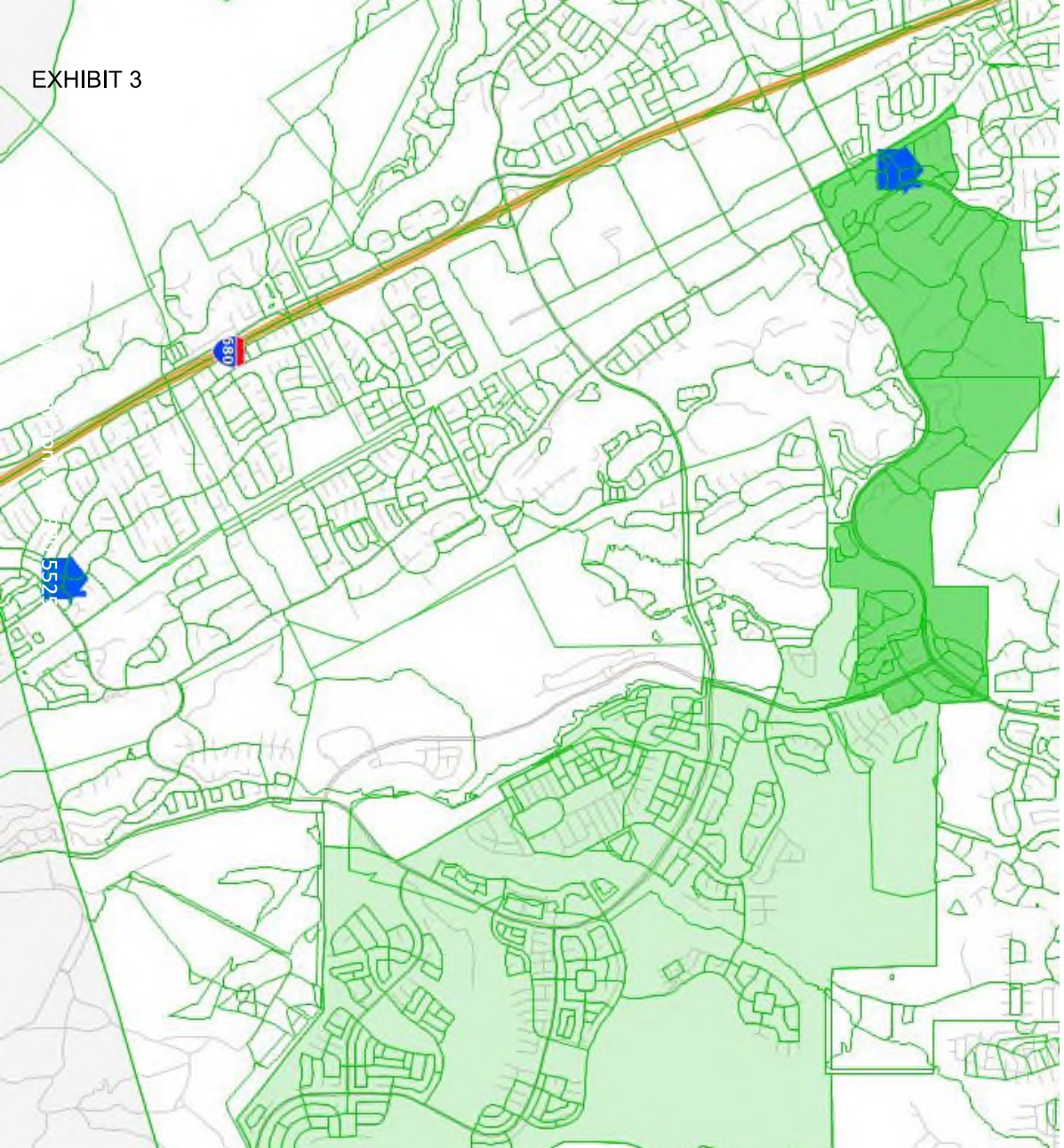
6

Federal Laws (Requirements)	
<ul style="list-style-type: none"> ❑ Equal Population <ul style="list-style-type: none"> ▢ No more than a 10% difference between the total population of the largest and smallest zones ❑ Federal Voting Rights Act <ul style="list-style-type: none"> ▢ Neighborhoods that are heavily Latino, Asian-American, African-American, or Native American cannot be divided in a way that dilutes their voting strength ❑ No Racial Gerrymandering <ul style="list-style-type: none"> ▢ Race cannot be the “predominate” factor 	<ul style="list-style-type: none"> ❑ Respect “communities of interest” ❑ Compact, Contiguous, and following Visible (Natural & man-made) boundaries <ul style="list-style-type: none"> ▢ Keep the zone borders relatively easy for voters to understand ❑ Respect voters’ choices / continuity in office <ul style="list-style-type: none"> ▢ Try to avoid pairing current Board members, where possible ❑ Accommodate Planned future growth*

EXHIBIT 2

December 5, 2018

** Planned future growth will be a factor in 2021 redistricting, but is not a factor this year (since little growth will occur before 2020 election).*



Area 3 combines an incumbent's high-turnout neighborhood (Southwest Danville) with just enough of Dougherty Valley to create a majority Asian trustee area.

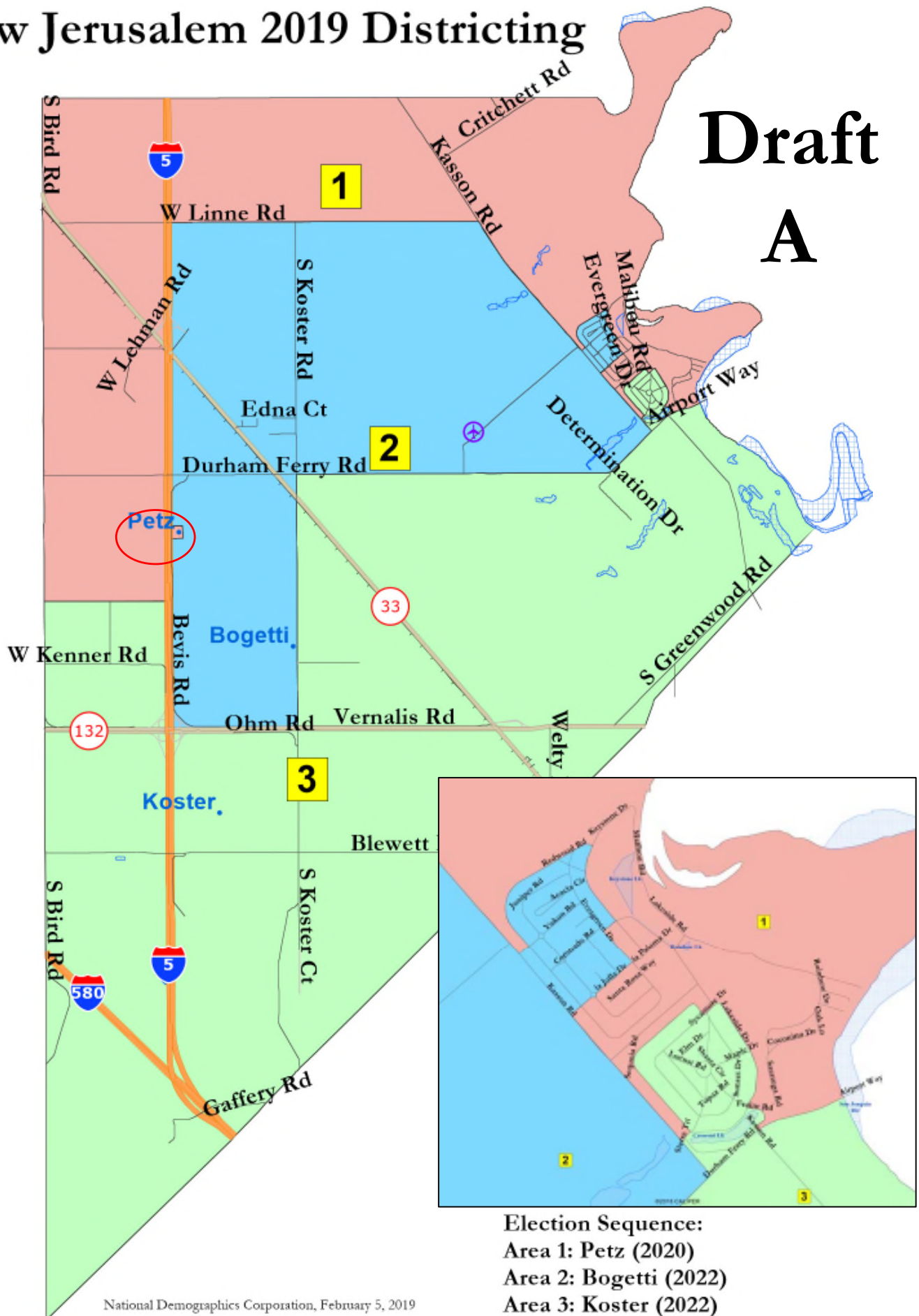
These two
areas have
no
community
of interest.

Tract
3451.14 Tract 3551.11

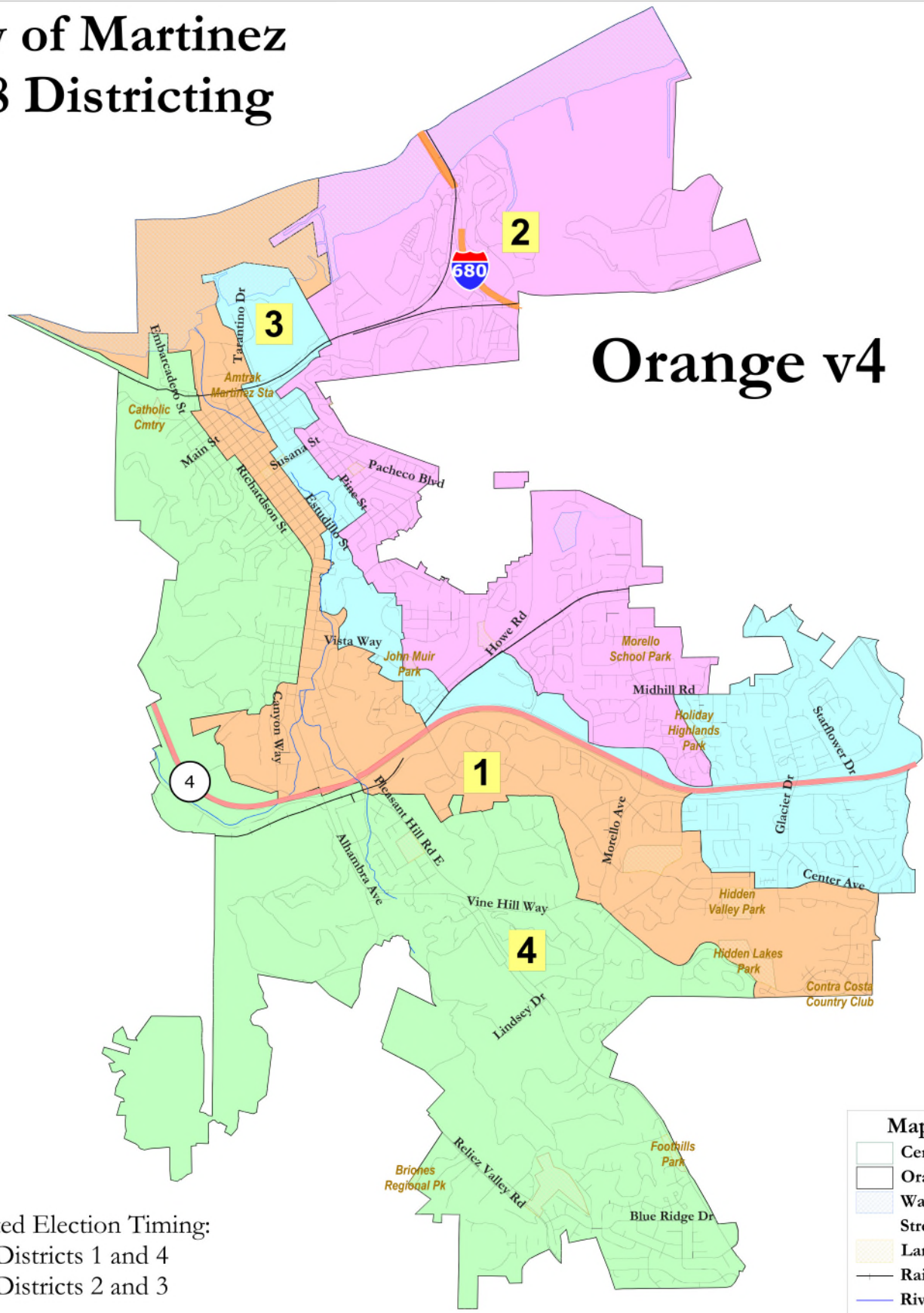
W Dougherty Danville Valley		
*		
Average age	50	33
-over 65	25%	5%
Own home	91%	52%
Employed (if over 25)	49%	96%
Speak only English at home	91%	41%
B.S. or B.S.E.	38%	53%
School-age in home	14%	30%
Born in U.S.A.	86%	52%

New Jerusalem 2019 Districting

**Draft
A**



City of Martinez 2018 Districting



Suggested Election Timing:
2018 - Districts 1 and 4
2020 - Districts 2 and 3

City of Richmond 2019-2020 Districting

115B

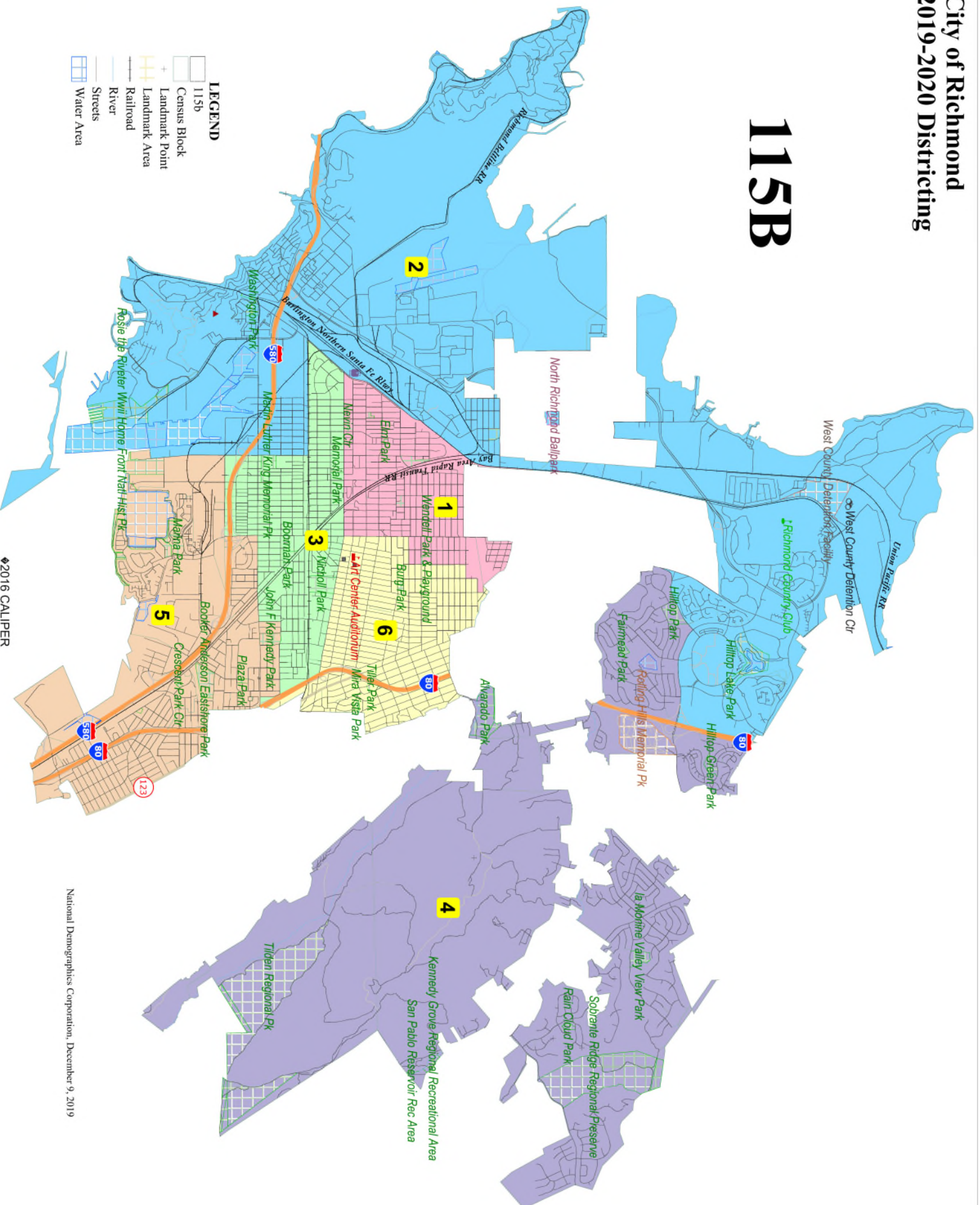


EXHIBIT 7



January 6, 2021

Santa Barbara Redistricting Commission
County Executive Office
105 E. Anapamu Street, Suite 406
Santa Barbara, CA 93101
Via email: redistricting@countyofsb.org

SUBJECT: Selection of Counsel and Demographer

Dear Commissioners,

The League of Women Voters of Santa Barbara (LWVSB) is a non-partisan, political organization. We encourage informed and active participation in government, work to increase understanding of major public policy issues, and influence public policy through education and advocacy.

On behalf of LWVSB, I would like to congratulate you on your selection of the additional commissioners to serve on the first ever Santa Barbara County Independent Redistricting Commission. This is a great responsibility which will have impacts for the next decade and beyond.

As you begin your terms, I call upon you to review the language of County Code Sec. 2-10.9A establishing the commission, the state Fair Maps Act under California Elections Code § 21500, and best practices from other counties and cities that have implemented independent redistricting processes. The first step is engaging in an open, transparent process to identify the best legal counsel and demographic services available through the solicitation of proposals through a Request for Proposals/Request for Qualifications process.

We have the following comments regarding the upcoming selection of your Legal Counsel:

Last year, we and others called your attention to the fact that Santa Barbara County is the only county independent redistricting commission that has not

used a transparent RFP process to select your legal counsel and demographer. As a result, the Board of Supervisors appointed interim counsel, and solicited RFP's for legal services. Proposals are due this week.

We will just raise one concern we have heard about your interim legal counsel. Churchwell White LLC is a firm that has stood against the California Voting Rights Act (CVRA), denying claims by minority communities as they seek to use districting as a means to empower their community in local elections. Their work in the City of Santa Clara has sought to diminish the voting power of the growing Asian American community.

<https://www.svvoice.com/santa-clara-had-expert-voting-rights-litigator-on-contract-but-trusted-600000-defense-to-attorney-with-limited-cvra-experience-and-a-lucrative-municipal-law-practice/>

We hope you agree that the commission should have legal counsel that shares a common goal of empowering communities and strengthening voting rights – not one that is actively fighting against the laws created to protect these rights.

We have the following comments regarding the selection of the demographer:

After hearing numerous concerns from the public regarding the County's issuance of a sole source/no bid contract for demographic services to National Demographic Corporation, the initial five commissioners stated their interest in using an RFP process for demographic services but deferred the question until all members of the commission had been chosen.

As you likely know, redistricting can serve to empower communities, sometimes at the expense of others. Given the inherent push-pull nature of redistricting, it becomes even more important that all participants share a common belief that the process was open, transparent and most of all fair. It could be very unfortunate to enter into this redistricting with a demographer and legal counsel, when the public has raised serious concerns about their ability to be fair, open, and impartial, without a review of all possible options.

As to your demographer, the issue is multilayered, and even more critical as they will be the ones holding the pen as you draw lines.

You have already received input from the community about hidden Republican ties of your current Demographer, Doug Johnson of National Demographics Corporation and the Rose Institute. During the 2011 California Redistricting process, the submission from Johnson and NDC (applying under League of Women Voters of Santa Barbara | 328 E Carrillo St., Suite A | Santa Barbara | CA | 93101

their Rose Institute banner) was rejected because of omissions in their application regarding partisan conflicts and failure to disclose their partisan activities and funding. A simple Google search will find descriptions of your demographer, such as:

Santa Maria Times: "Rose Institute advises Republicans on redistricting."

Sacramento Bee: "The conservative Rose Institute."

The Los Angeles Times: "The Republican-oriented Rose Institute."

California Journal: "Rose was a group used by Republicans and largely shunned by Democrats." and even Johnson himself stated "We have a reputation for being conservative."

Since 2011, the work done by Doug Johnson and National Demographics has become even more partisan. In their most egregious work to come public (and it is noteworthy that most partisan work is not public), the Republican Party of North Carolina hired Johnson in a case, *Covington v State of North Carolina*, which was a clear case of both racial and partisan gerrymandering. The media widely reported on Johnson's misleading testimony that had to be thrown out by a three-judge panel. <http://pulse.ncpolicy-watch.org/2019/07/25/did-hofeller-draw-nc-maps-before-redistricting-process-judges-throw-out-expert-testimony-claiming-he-didnt/#sthash.J1dgAu9H.dpbs>

While this should be a major red flag, the greater problem has been NDC and Doug Johnson's reputation within their local redistricting.

Like Churchwell, NDC and Johnson have been the primary opponents of the California Voting Rights Act, taking millions of taxpayer dollars in challenges to the state law, which have often been settled out of court, with huge costs to the local jurisdictions that they represented.

There are dozens of cases in which Johnson and NDC have led cities in efforts to fight against districted elections. The only silver lining is that in every single case they have lost, or the jurisdiction settled before the court was required to issue a final ruling.

Johnson and NDC have also fought empowerment of the Latino community in California. Most recently, Johnson testified in support of Kern County in a lawsuit against Latino civil rights groups which were calling for an additional Latino Majority Minority district in their supervisorial lines. This case, led by the Mexican American Legal Defense and Education Fund (MALDEF) and civil rights leader Dolores Huerta, was successful in finding that the County of Kern and Johnson, had misled the court and supported plans which diluted

the voting power of the minority Latino community, forcing a mid-decade re-districting, an unprecedented delay in an election, and creation of a new Latino seat. <https://www.latimes.com/local/lanow/la-me-kern-county-voting-rights-20180331-story.html>

In another case of denying the Latino Community proper representation, Johnson and NDC failed to create a second Latino district in **Redwood City**: <https://climaterwc.com/2019/03/20/latino-group-decries-lack-of-representation-in-redwood-city-district-election-map/>. In this case, Johnson told the city that a second Latino majority-minority district could not be created and so, upon his advice, the city moved forward with maps. Then, after a threat from civil rights attorney Kevin Shenkman, Johnson was forced to reverse his prior statements, causing the city to have to reopen the process and begin considering maps that reflected the need for proper Latino representation. Ultimately, two majority-minority districts were drawn, after much delay and added cost to the city and the community.

Again, in **West Contra Costa**, Johnson and NDC drew lines that had to be redone after a court found he had intentionally weakened the voting power of Latinos. <https://richmondconfidential.org/2019/03/07/a-final-trustee-area-map-emerges-as-lawsuit-resolves/>. Like in Redwood City, this change was only made after another attorney, Scott Rafferty sued the agency.

The behavior of Johnson and NDC has become so predictable in regards to these Civil Rights violations that when the City of Alhambra entered a settlement agreement after facing a lawsuit over the creation of districts, that agreement specifically stated "Parties recognize that the City will require the services of a qualified demographer to assist that process; and that demographer will not be National Demographics Corporation or its principals, officers or employees." It is amazing that a specific firm's non-participation has been a condition of a legal settlement.

Aside from their partisanship, and their opposition to the state and federal voting rights acts, Johnson and NDC have one last and potentially most important calling card: incumbent protection.

In dozens of redistricting plans and CVRA conversions Johnson and his team have sought to draw districts with one singular goal: allowing incumbent lawmakers to retain their political power.

The most outlandish of all these is the districting in the **City of Martinez** that a judge said was such a gerrymander that it "verges on self-parody"

and was drawn only to protect incumbents: <https://www.mercuryn-ews.com/2020/02/05/judge-may-force-martinez-to-change-its-city-council-districts-lawsuit-headed-to-trial/>

You can see the Martinez map, and the where four of the incumbents live within 1/8th of a mile of each other, here:

<https://www.facebook.com/297781150711778/photos/a.323325638157329/323326121490614/?type=3&theater>.

This work protecting incumbents continued in the **City of Roseville** where a Johnson created plan was found to be devised entirely for the purposes of protecting incumbents. <https://www.sacbee.com/article237968189.html> Both Martinez and Roseville, in reaction to their incumbent gerrymanders, have since been forced to use an independent redistricting commission. And they will be required to follow the Fair Maps Act, a policy that forbids incumbent gerrymandering and was written largely in response to the work being done around the state by NDC. It would be horribly ironic if this same individual was brought into our community to run a redistricting that is supposed to be seen as "independent."

It should be recognized that your commission did receive a very positive letter in support of Johnson and NDC as your demographer from the Mayor of the **City of Lompoc**. So, we did some research. And, yet again, this was a CVRA conversion in which multiple public plans were submitted, some of which put incumbents into the same district. But every map created by NDC, including the final approved map, protected every incumbent council member. In their own presentations, they would state that one of the objectives was "continuity in office" – specifically protecting incumbents. It is no surprise that the Mayor would have good things to say about Johnson and NDC – regrettably for the wrong reasons.

If you want to have your independent redistricting process be respected by the public, you should take immediate action.

An open transparent RFP process will allow you to obtain additional information about your prospective counsel and demographer, and alternatives available to you. We would also encourage you to invite attorneys like Kevin Shenkman and Scott Rafferty, and members of the public to provide you with information regarding qualified counsel and demographers. It is undeniably better to get this feedback now rather than wait for them to bring a lawsuit later.

The League of Women Voters of Santa Barbara is asking you to please open a public RFP process for your demographer as you have done with your legal counsel, and to please move quickly. There is still time to do a robust search and interview your options for a demographer, as other independent commissions have done. There are several very qualified law firms and demographic service companies in California and nationally who would likely bid if there is an open, transparent and competitive process.

Please contact league member Mary Rose at mary.rose@maryrose.cc if you have questions or need more information.

Thank you for your attention to this very important matter.



Vijaya Jammalamadaka
President, LWVSB

EXHIBIT 8

2016 WL 3693498 (Cal.Super.) (Trial Order)
Superior Court of California.
San Bernardino County

Lisa GARRETT, Plaintiff,
v.
CITY OF HIGHLAND, California; and does 1-100. Inclusive, Defendants.

No. CIVDS 1410696.
April 6, 2016.

Corrected Judgment

Kevin L. Shenkman (SBN 223315), Mary R. Hughes (SBN 226622), John L. Jones II (SBN 225411), Shenkman & Hughes, 28905 Wight Road, Malibu, California 90265, Telephone: (310) 457-0970.

R. Rex Parris (SBN 96567), Ashley Parris (SBN 239537), R. Rex Parris Law Firm, 43364 10th Street West, Lancaster, California 93534, Telephone: (661) 949-2595, Facsimile: (661) 949-7524.

Milton C. Grimes (SBN 59437), Law Offices of Milton C. Grimes, 3774 West 54th Street, Los Angeles, California 90043, Telephone: (323) 295-3023, Attorneys for Plaintiff.

David S. Cohn, Judge.

9. To estimate the Latino proportion of the voters who cast ballots in recent elections in Highland experts offered by both Plaintiff and Defendant started with matching the names of voters with the U.S. Census Department's list of Spanish surnames. This is an accepted method of estimating the proportion of Latinos in a large group. While the parties agree that this method of Spanish surname matching tends to underestimate the Latino proportion of a group, they disagree on the amount of that underestimation. Defendant's expert, Douglas Johnson, increased his estimates of the Latino proportion of voters by approximately 11% based on the 1990 Col by-Perkins study that investigated the error rates of Spanish surname matching in each State. Plaintiff's expert, David Ely, criticized that 11% adjustment because it is based on an outdated study that was not focused on the City of Highland, and the demographics of Highland in 2016 are significantly different than those of California, or any other State, in 1990, in ways that impact the accuracy of Spanish surname matching. The Court agrees with Mr. Ely, Adjusting the estimates from Spanish surname matching, for the purpose of comparing those estimates to the thresholds of exclusion is inappropriate. Nonetheless, even if the Spanish surname matching estimates of the Latino proportion of the electorate were increased as suggested by Mr. Johnson, the conclusions of this Court would be the same.

SCOTT J. RAFFERTY

ATTORNEY AT LAW

1913 WHITECLIFF COURT
WALNUT CREEK CA 94596

(202)-380-5525
RAFFERTY@GMAIL.COM

March 16, 2021

Todd Barlow, County Superintendent of Schools todd.barlow@kingscoe.org
Mary Gonzales-Gomez, County Board President mary.gonzales-gomez@kingscoe.org
Dr. Xavier Piña, Superintendent, Armona UESD xpina@aesd.org
Mr. Juan Tafolla, President jtafolla@aesd.org
Rich Merlo, Superintendent, Corcoran USD rmerlo@corcoranunified.com
Sammy J. Ramirez, President sammyjramirez@corcoranunified.com
Thomas Addington, Superintendent, Central Union SD taddingt@central.k12.ca.us
Ceil Howe III, President cusdboard@central.k12.ca.us
Joy Gabler, Superintendent, Hanford ESD jgabler@hanfordesd.org
Robert Garcia, President
Dr. Victor Rosa, Superintendent, Hanford JUHSD vrosa@hjuhsd.k12.ca.us
Alicia Martella, President amartella@hjuhsd.org
Charlotte T. Hines, Superintendent, Island Union School District charlottehines@island.k12.ca.us
Kellee Wheatley, President
Cathlene Anderson, Superintendent, Kings River-Hardwick Union ESD canderson@krhsd.k12.ca.us
Teresa Carlos-Contreras, President
Robin Jones, Superintendent, Kit Carson UESD rjones@kitcarsonschool.com
Joe Oliveira, President joliveira@kitcarsonschool.com
Debbie Muro, Superintendent, Lemoore UHSD dmuro@luhsd.k12.ca.us
Jason Orton, President
Dr. Andrew Johnsen, Superintendent, Lakeside Union SD ajohnsen@lsusd.net
Mrs. Holly Ferrante, President hferrante@lsusd.net
Paul van Loon, Superintendent, Pioneer Union SD vanloonp@puesd.net
Darrell Reis, President reis.pioneer@gmail.com
Patrick Sanchez, Superintendent, Reef-Sunset USD psanchez@rsusd.org
Cheryl Hunt, Superintendent, Lemoore UESD cherylhunt@myluesd.net
Jerry Waymire, President jwaymire@myluesd.net

Dear Superintendents and Board Presidents:

This letter asks that you seriously consider the benefits of joining together for purposes of redistricting, particularly because the time period to adjust trustee areas will be reduced from ten months to only five months this year. At its recent meeting, the Board of Supervisors indicated that you will be consulted before it begins consideration of an independent redistricting commission, with which you could

contract. The Supervisors also tabled a proposal to contract with its National Demographics Corporation, which assisted them in 2011. The attached letter raises concerns regarding NDC. There are several additional options, and the otherwise unfortunate delay of census data provides additional time to establish a commission and also to select the best available demographer.

If the county does not provide a countywide commission, you may be able to collaborate through a joint powers authority (Government Code, Section 6502, *et seq.*), either to conduct an independent hearing process or simply to provide demographic support for adoption of boundaries by each respective board. Finally, you may be able to delay drawing boundaries pursuant to Education Code, Section 5019.5, so the County Board could empanel a commission and adopt the maps that it proposes. I urge you to consider each of these options.

There are good reasons for independent redistricting. Although school districts currently have no formal criteria under state law, these maps must ordinarily last a decade. Having incumbents draw the maps is not optimal, since some are likely to leave the board by 2030. Voters dislike gerrymanders. Apparent abuses often backfire; public reaction can cause incumbents who appear to be unfairly advantaged not even to seek reelection.¹ Drawing maps can also destroy collegiality within a board, which explains West Contra Costa USD's decision to seek an independent commission for its post-census map. (The County Board rejected the trustee area map it proposed when it was forced to abandon at-large elections.)

I write from the perspective of minority voters. As an attorney, I have represented voters from protected classes (*i.e.*, Latino, Asian, Black, Native American) who have invoked the collaborative process that allows jurisdictions to avoid litigation under the California Voting Rights Act. (None of these proceedings were in Kings County.) The CVRA creates a strong presumption in favor of single-member constituencies. The collaborative conversion process also enables districts to create trustee areas that comply with Section 2 of the federal Voting Rights Act, 52 U.S.C. §10301.

¹ The attached letter to the County Board includes a map where the demographer crossed an interstate highway to move one house (an incumbent) into his own district. This received considerable criticism, and he decided not to seek reelection. In a second example, a district denied its Asian community a dedicated voice by using what its staff called a "tentacle" to link just enough Asians with a very different demographic in a different city. The demographer claimed that the map complied with federal law because it was 51% Asian. Again, the map sought to benefit an incumbent who declined to seek reelection.

(However, Elections Code, Section 10010 does not apply to districts that have already created trustee areas.)

I represented Latino voters in Ruiz-Lozito v. West Contra Costa USD, in which the District stipulated that its at-large elections would likely be found to violate Section 2 had the case not settled before trial. The settlement included an independent redistricting commission, possibly the first authorized by an individual school district anywhere in the country. It is important to note that the independent commission was the WCCUSD's initiative. The WCCUSD Board did not want to go through a process as divisive as the initial districting had been. It also wanted the post-census map to have credibility with its constituents.

Prior to WCCUSD, only two school districts in California had redistricting commissions (and neither was independent). Los Angeles USD trustee area maps are drawn by the city council. Since 2001, an advisory commission (an appointee of each of the seven board incumbents plus eight appointees of the council president and mayor) has recommended boundaries to the city council. Pasadena USD has a hybrid commission partially appointed by the Board, which can modify the proposed map by two-third vote.

The County Board of Education and almost every school district in Kings County already conduct elections by single-trustee areas. Education Code, Section 5019.5(a) requires strict equality of population. Education Code, Section 1002 authorizes the County Board of Education to consider compactness, contiguity, and respect for "communities of interest," which are areas that share demographic qualities, interests, needs, or philosophies. These traditional criteria have generally been applied to school district trustee areas, for which the Legislature has not provided formal criteria (other than equality of population). In some cases, if a preliminary analysis shows that communities of interest and population variation among districts have not changed significantly over the past decade, a board may decide to continue using its current boundaries. In all other cases, redistricting will be necessary. If a school district does not adjust its own boundaries by March 1, 2022, the County Board must do so by April 30, 2022. Education Code, Section 5019.5(b).

Districts that can create at least trustee one area in which a majority of adult citizens belong to a protected class need to ensure that they comply with Section 2. These districts need to ensure that trustee keep minority neighborhoods united. Generally, they need to maximize the number of trustee areas in which minority voters are able to elect candidates of their choice. Even if it is impossible to create a minority-

majority trustee area, Section 2 requires that all districts avoid intentionally splitting minority neighborhoods.

As you may know, the total population data needed to establish the size and equality of trustee areas will not be available until October 2021,² so no maps can be created before then. The Census obtains most other demographic data from its American Community Survey,³ which provides economic and social data for every block group. This includes citizenship status, which is needed to determine minority voting strength, as well as socio-economic indicators that help define communities of interest. The ACS is based on five years of sampling data. Most demographic data are released each December. Citizenship information was released last month,⁴ but may not be updated in time for use in the redistricting process.⁵ There may be some scope to seek public input on communities of interest using these data, even before October 2021.

At its meeting on March 9, 2021, the Board of Supervisors tabled the decision on selecting a demographer for its own redistricting until March 23, 2021.⁶ Counties and cities are subject to new statutory requirements as a result of the Fair Maps Act, enacted in 2019. Elections Code, Sections 21517.1 and 21501(c) now require four hearings before supervisorial districts can be adopted and create a mandatory hierarchy of factors, which limits gerrymandering. The Legislature is considering SB 443, which would strengthen these anti-gerrymandering standards and apply them uniformly to all jurisdictions, including school districts.⁷

Possible Options to Improve Redistricting and Reduce its Cost

There are three types of commissions to which a jurisdiction can delegate some or all of its responsibilities to redistrict. It can create an “advisory” commission that prepares draft maps, with the board retaining the ultimate decision. In this case, the only statutory requirement is that family members, staff, and campaign staff of board members cannot serve. Elections Code, Section 23002.

² <https://www.census.gov/newsroom/press-releases/2021/statement-redistricting-data-timeline.html>

³ <https://www.census.gov/programs-surveys/acs>

⁴ <https://www.census.gov/programs-surveys/decennial-census/about/voting-rights/cvap.2019.html>

⁵ There will be an entirely new process for identifying adult citizens (eligible voters) for Voting Rights Act compliance. <https://www.census.gov/programs-surveys/decennial-census/about/voting-rights/cvap.html>

⁶ See March 9, 2021 agenda, [Item V.A.](#)

⁷ SB 443 would also relax the strict standard for equal population among trustee areas, which has not always been followed.

An elected board may also delegate to an independent commission that chooses the final map. In the case, board members cannot directly appoint the commission, but there is considerable flexibility in how the commission is appointed. Elections Code, Section 23003 prohibits a commission all of whose members belong to the same political party and provides additional conflict of interest standards, including restrictions on past and future relationships; the board can provide more stringent rules. These commissions are subject to the Brown Act and must hold at least three hearings.

A third option is a hybrid commission, which is subject to the same statutory requirements, but reserves the final decision to the elected board. The Board may direct a hybrid commission to produce a certain number of options (or may require the commission to produce additional options if it finds none of them acceptable). The Board may also reserve the right to veto members proposed by the selection authority (which is often a judge or a citizen panel appointed by the Board or a third party).

Individual Independent Commission

Although I strongly believe that independent commissions benefit both the public and the legislative body, I need to caution districts about the cost and complexity of appointing qualified members and establishing essential procedures. WCCUSD is a large district, and I was able to convince the Hon. Thelton Henderson, a retired federal judge and close associate of Dr. King, to serve as appointing authority. It is also necessary to establish procedures for public input, especially rules to restrict ex parte communications. There are limited precedents for these rules and procedures, so designing these processes can be a complex task for an individual school district.

One of the insights from WCCUSD is the value of having some commissioners who do not reside within the district. The panel has one member from each of its five trustee area, plus two from anywhere in the county outside the District. This expands the pool of volunteers to attract skilled members from throughout the county, and it is also expected to help the panel mediate or resolve issues where area members have different views.

County Commission

Santa Barbara, Los Angeles, San Bernardino, and San Diego Counties each have independent redistricting commissions. At their meeting on March 9, 2021, the Kings County Supervisors directed county staff “seek information from cities and

school districts within Kings County for inclusion in the redistricting process.”⁸ Elections Code, Section 23004 enables cities and schools voluntarily to contract with an independent redistricting commission created by the county. This body would adopt boundaries after holding three public hearings in each jurisdiction.

A County Commission has many benefits. Demographic services will be more economical and likely of better quality. In each school district, the panel will automatically enjoy the increased expertise and objectivity that WCCUSD sought by including external members. The Commission will develop insights and experience from working with multiple bodies in the county.

A joint commission could greatly increase the quality and convenience of public input. Every hearing will be within the jurisdiction of the County Board, as well as either two school districts (or one of the county’s two unified districts). Many of the communities of interest will be in common for all jurisdictions near the location of the hearing, so a joint commission will reduce the effort required by the public to communicate the same information at separate hearings for each local jurisdiction.

A County Commission may not be available, either because the Supervisors choose not to delegate the drawing of their own districts, or because the commissioners are unwilling to conduct three hearings in each jurisdiction.

Joint Powers Commission

Some or all of the school districts may create an independent commission as a joint powers authority under the provisions of Government Code, Section 6502. This would have many of the economies and benefits of a County Commission, in the event that option is not available.

County Board Commission

The County Board may provide several options for school districts to delegate redistricting responsibilities. One would be to make available an independently selected commission to hold hearings and make advisory recommendations to be considered by each district board. Since this commission is ultimately advisory, it would not have to conduct three hearings in each jurisdiction.

Alternatively, the County Board could empanel an independent (or hybrid) commission and invite districts to announce in advance that they did not intend to

⁸ [March 9, 2021 Action Summary at 2.](#)

adjust their boundaries before March 1, 2022. In this event, the County Board would be responsible for adopting the districts between March 1, 2022 and April 30, 2022.

Education Code, Section 5019.5(b). Counsel for the County Board may conclude that an independent or hybrid commission could be appointed by the County Board (or its designate) and could conduct hearings for school districts that had opted to delegate redistricting. The County Board would undertake formally to adopt the commission's maps during March or April 2022.

Unless legal counsel to the County Board advises otherwise, I would anticipate that delegation to this type of commission (or any other joint commission) would be voluntary for each participating school district. Education Code, Section 5019.5(a) provides that each district board has the initial authority to redistrict its own trustee area boundaries. The County Board can redraw a district's trustee areas on its own initiative, but unless a district has failed to redistrict by March 1, 2022, any County Board change to district boundaries can be subject to voter approval if 5% of the district's registered voters submit a petition. Education Code, Section 5019(d).

CONCLUSION

I would urge you to encourage the Supervisors to make high-quality demographic services available to each of the county's school districts. This commission (or other joint effort) will produce trustee areas that make district boards more representative. The resulting maps will likely avoid the need for the County Board to rearrange any boundaries during the next decade. An independently drawn map will increase the voters' confidence that the boundaries are appropriate and fair. Delegation eliminates the potential for divisive arguments that can occur when a board creates its own area boundaries. An independent commission is most efficient and economical when school districts create a combined process among themselves and with other county jurisdictions.

Sincerely,

A handwritten signature in dark ink, reading "Scott Rafferty". The signature is written in a cursive, flowing style with a large, prominent "S" at the beginning.

Scott J. Rafferty

Updated March 23, 2021

Originally submitted March 9, 2021

Submit via bosquestions@co.kings.ca.us

The Honorable Board of Supervisors
County of Kings
1400 W Lacey Blvd
Hanford, CA 93230

Re: Kings County Proposed Redistricting Consultant National Demographics Corporation

Dear Kings County Board of Supervisors:

We the undersigned object to the hiring of National Demographics Corporation as the consulting agency for Kings County 2021 decennial redistricting because they and their President have misrepresented data that cost taxpayers money during legal proceedings.

In 2017, Dr. Douglas Johnson, President of NDC, testified in *Luna v. Cnty. of Kern* and his testimony was rejected because his testimony “lacked merits.” The Board of Supervisors had originally been notified of the redistricting issues in August of 2011. Ignoring the warning, the county faced a legal battle in 2016 and hired NDC in 2017 in which Dr. Johnson was discredited for his testimony (see <https://casetext.com/case/luna-vcnty-of-kern-4>).

Also, in 2001 Dr. Johnson obtained information regarding the location of the incumbent which was a prohibition set forth in § 15 in Arizona law (see <https://azredistricting.org/2001/2004legfinal/2004legcourtorder.pdf>)

Again, cited in a letter by the League of Women Voter of Santa Barbara 2021 Dr. Johnson and NDC failed to create a second Latino district in Redwood City, stating that a second district could not be created. The city went ahead with the proposed maps by Dr. Johnson. Only after a threat from civil rights attorneys was Dr. Johnson forced to reverse his previous statement (see <https://climaterwc.com/2019/03/20/latino-group-decries-lack-of-representation-in-redwood-city-districtelection-map/>).

Similarly, Dr. Johnson’s testimony has been stricken by North Carolina’s three judge panel for misleading information because he misrepresented data in population shifts (see <https://www.newsobserver.com/news/politics-government/article233105817.html>)

Finally, we the undersigned object to the hiring of National Demographics Corporation as the consulting agency for Kings County 2021 decennial redistricting because they and their President have had a history of misrepresented data that cost taxpayers money and opens the county up to possible litigation.

Signed by:

Barbara

Hill

Lemoore

Ashley	Neely	Hanford
Suzanne	Willis	Hanford
Norberto	Gonzalez	Hanford
Bianca	Pravongviengkham	Hanford
Mary Claire	Fitiausi	Hanford
Steven	Pravongviengkham	Hanford
Caryn	Spriggs	Hanford
Stephen	Tarr	Hanford
Ivette	Chaidez	Hanford
Josh	Morgan	Hanford
Lori	Stafforini	Hanford
Susan	Ross	Hanford
Celina	Boelter	Lemoore
Carlos	Tafolla	Armona
Cathleen	Jorgensen	Hanford
Isla	Dudley	Hanford
Monica	Jimenez	Bakersfield
Crystal	Jackson	Lemoore
Connie	Wlaschin	Lemoore
Daniel	Rivas	Lemoore
Julie	Atkinson	Lemoore
Cayd	Richert	Hanford
Cayd	Herbrand	Hanford
Central Labor	Council	Fresno -Madera-Tulare-Kings
Terry	Norris	Lemoore
Joan	Howard	Hanford
Fabiola	DeCaratachea	Lemoore
Carol	Gallegos	Lemoore
Angela	Amith	Lemoore
Andrew	Westall	Los Angeles
Oralia	Vallejo	Hanford
Margaret	Lirones	Corcoran
Kathleen	Salyer	Hanford
Jaqueline	Lowe	Hanford
Kristy	Ly	Fresno
Cesar	Caratachea	Lemoore
Hallie	Spence	Hanford
Kristine	Allison	Hanford
Lynda	Mays	Hanford
Aldo	Garcia	Corcoran
Barbara	Castle	Hanford
Yolanda	Monsivaiz	Hanford
Katy	Culver	Hanford
Myndi	Hardgrave	Hanford
Marcella	Mares	Fresno

Tomas	Tafolla	Armona
Pat	Waddell	Lemoore
Brigid	Fogg	Hanford
Kalli	Rocha	Hanford
Humberto	Gomez	Parlier
Ben	Miller	Hanford
Claire	Jones	Hanford
Jesus	Solis	Hanford
Betty	Sanchez-Mallory	Hanford
Teresa	Cespedes	Lemoore
Chealsey	Wimmer	Lemoore
Courtney	Hawkins	Hanford
Barbara	Hill	Lemoore
Mary	Takahashi	Los Altos
Elsa	Mejia	Madera
Daniel	O'Connell	Fresno
Linda	Kobashigawa	Fresno
Cecilia	Ruesta	Fresno
Keri	Kline	Lemoore
Kathleen	Salyer	Hanford
Viviana	Fones	Hanford
Carmen	Tafolla	Armona
Leticia	Tafolla	Armona
Maria	Ramirez	Hanford
Sandra	Barojas-Renteria	Lemoore
Brenda	Zavala	Lemoore
Daniel	Barojas	Lemoore
Martina	Renteria Rivera	Lemoore
Emilio	Garcia	Hanford
Brenda	Zavala	Lemoore
Mayra	Barojas Gonzalez	Lemoore
Mackenzie	Oliveira-Spires	Lemoore
Marlin	Seba	Lemoore
Marisol	Campos	Hanford

From: [BOS Questions](#)
To: [Badasci, Diane](#)
Subject: FW: Vote No on hiring NDC
Date: Tuesday, March 23, 2021 9:12:30 AM

From: Ashley Neely

Sent: Tuesday, March 23, 2021 9:00 AM

To: BOS Questions

Subject: Vote No on hiring NDC

Dear Board of Supervisors,

Hello, my name is Ashley Neely and I live in Hanford, CA. Please vote no on the contract with National Demographics Corporation as the consultant for redistricting.

- National Demographics Corporation Legal president is shaky at best:
 - National Demographics Corporation and its president, Dr. Douglas Johnson, had testimony stricken by a judicial panel in North Carolina for misleading information (News & Observer).
 - Dr. Johnson's input was rejected in Luna v. County of Kern because his analysis was found to "lack merit."
 - In the 2018 Jauregui v. City of Palmdale, the Court referenced how Dr. Johnson was responsible for creating districts in violation of the Voting Rights Act and with the sole intent to protect sitting incumbents.
 - National Demographics Corporation will cost the county millions in legal fees for subpar work.
 - Kern County case v Luna cost Kern \$11 million dollars in legal fees
 - Lengthy trials at the expense of tax payer
- Voting for elected officials belongs to the people of this county. District lines should not be drawn to protect sitting incumbents.

Please vote no on the contract with National Demographics Corporation as the consultant for redistricting.

Ashley Neely

From: [BOS Questions](#)
To: [Badasci, Diane](#)
Subject: FW: Do not hire National Demographics Corporation
Date: Tuesday, March 23, 2021 9:26:24 AM

From: Barbara Hill

Sent: Tuesday, March 23, 2021 9:25 AM

To: BOS Questions

Subject: Do not hire National Demographics Corporation

Please do not hire National Demographic Corporation as they will be a liability to county. They have previously misrepresented data that cost taxpayers money during legal proceedings. As a taxpayer in Kings County I believe the BOS needs to protect the county from the legal suits that this corporation will bring. Taxpayer money must be more closely safeguarded.

Barbara Hill

Lemoore